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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,316	02/04/2002	Yaguang Liu		3984

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12/09/2002

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EXAMINER

FLOOD, MICHELE C

ART UNIT

PAPER NUMBER

1654

DATE MAILED: 12/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/062,316

Applicant(s)

Liu

Examiner

Michele Flood

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Feb 4, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 1-26 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-10 and 13, drawn to a safe botanical drug for treatment and prevention of malignant pleural effusion and cancer, and enhancement immune function comprising polysaccharide of Dang Gui (PDG) and Lan Xiang Xi (LX), classified in class 424, subclass 725 or class 514, subclass 885, for example.
 - II. Claim 11, drawn to a process for producing LX comprising steps (a) - (i), classified in class 424, subclass 725, for example.
 - III. Claim 12, drawn to a process for producing polysaccharides of Dang Gui (PDG) comprising steps (a) - (n), classified in class 424, subclass 725, for example.
 - IV. Claims 14-16 and 18-25, drawn to a safe botanical drug comprising a polysaccharide of Dang Gui containing soybean-liposomes (DGL) and LX-containing soybean-liposomes (LXL) which is used for treatment and prevention of malignant pleural effusion and cancer, and enhancement immune function, classified in class 424, subclass 725 or class 424, subclass 757, or class 514, subclass 885 or class 514, subclass 54, for example.
 - V. Claim 17, drawn to a process for producing DGL and LXL comprising the steps of (a) - (f), classified in class 424, subclass 725, for example.

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VI. Claim 26, drawn to a safe botanical drug (LX, LXL and PDG) which is used for treatment and prevention of malignant pleural effusion and cancer, and enhancement immune function having disclosed toxicological and pharmacokinetics indexes, classified in class 424, subclass 725 or class 424, subclass 757 or class 514, subclass 885, for example.

2. Inventions I, IV, and VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the three different groups are directed to three different inventions. For instance, the invention of Group I differs from the inventions of Group IV and Group VI because the invention of Group I is directed to a composition comprising Dang Gui (PDG) and Lan Xiang Xi (LX), whereas the invention of Group IV is directed to a composition comprising Dang Gui containing soybean-liposomes (DGL) and LX-containing soybean liposomes (LXL), and whereas the invention of Group VI is directed to a composition comprising LX, LXL and PDG. Different compositions comprising different ingredients do not necessarily have the same functional effect. Moreover, These compositions are capable of separate manufacture, use or sale, as claimed, and are patentable (novel and unobvious) over each other (though they may be unpatentable because of the prior art) subjects.

The several inventions above are independent and distinct, each from the other. They have acquired a separate status in the art as a separate subject for inventive effect and require

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independent searches. The search for each of the above inventions is not co-extensive particularly with regard to the literature search. Further a reference which would anticipate the invention of one group would not necessarily anticipate or even make obvious another group. Finally, the consideration for patentability is different in each case. Thus, it would be an undue burden to examine all of the above inventions in one application.

The remaining groups are directed to different inventions which are not connected in design, operation, and/or effect. These methods are independent since they are not disclosed as capable of use together, they have different modes of operation, they have different functions, and/or they have different effects. One would not have to practice the various methods at the same time to practice just one method alone.

4. Inventions II, III and V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the three different groups are directed to three different methods of making three different products comprising different ingredients and different process steps. Moreover, These methods are capable of separate manufacture, use or sale, as claimed, and are patentable (novel and unobvious) over each other (though they may be unpatentable because of the prior art) subjects.

5. Because these inventions are distinct for the reasons given above and the search required for one Group is not required for another Group, restriction for examination purposes as indicated is proper.

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6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Flood whose telephone number is (703) 308-9432. The examiner can normally be reached on Monday through Friday from 7:15 am to 3:45 pm. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 receptionist whose telephone number is (703) 308-0196 or the Supervisory Patent Examiner, Brenda Brumback whose telephone number is (703) 306-3220.

Michele C. Flood.
MCF

December 6, 2002